

NORMA L. McBRIDE

IBLA 83-396

Decided May 24, 1983

Appeal from decision of the Nevada State Office, Bureau of Land Management, rejecting desert land entry application N-37169 in part.

Affirmed.

1. Desert Land Entry: Lands Subject to -- Mineral Lands: Nonmineral Entries

Bureau of Land Management properly rejects a desert land entry as to land within a material site because such land is known to contain minerals and mineral lands are excluded from desert land entry.

APPEARANCES: Norma L. McBride, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Norma L. McBride has appealed the decision of the Nevada State Office, Bureau of Land Management (BLM), dated January 31, 1983, rejecting her desert land entry application N-37169 as to lot 3, sec. 30, T. 40 N., R. 70 E., Mount Diablo meridian, because under 43 CFR 2520.0-8 land selected for desert land entry must be not only irrigable but also surveyed, unreserved, unappropriated, and nonmineral. 1/ BLM found that lot 3 is "within a material site which was approved November 14, 1960" and that "lands within a material site are considered to be mineral in character."

In her statement of reasons, appellant argues that lot 3 was approved on November 14, 1960, for the Nevada State Highway Department which dug a gravel pit on a small portion of the land about 20 years ago. She does not think the highway department has used it since then and states that it "never made a road into the gravel pit." She asserts that the water on the property is only about 6 to 10 feet below the surface so that the highway department could not dig very deep and that lot 3 would be very good for farming.

[1] The Desert Land Act, as amended, 43 U.S.C. §§ 321-339 (1976), authorizes the issuance of patents to persons who reclaim desert lands of the public domain by irrigation and cultivation. Desert lands are defined by

1/ The application was filed on Sept. 21, 1982, for lots 2, 3, 4, SE 1/4 NW 1/4, NE 1/4 SW 1/4, sec. 30, T. 40 N., R. 70 E., Mount Diablo meridian.

the Act as "[a]ll lands exclusive of timber lands and mineral lands which will not, without irrigation, produce some agricultural crop." 43 U.S.C. § 322 (1976). Departmental regulation 43 CFR 2520.0-8 states in part that:

In order to be subject to entry under the desert-land law, public lands must be not only irrigable but also surveyed, unreserved, unappropriated, non-mineral (except lands withdrawn, classified, or valuable for coal, phosphate, nitrate, potash, sodium, sulphur, oil, gas or asphaltic minerals, which may be entered with a reservation of such mineral deposits, as explained in Subpart 2093, nontimbered, and such as will not, without artificial irrigation, produce any reasonably remunerative agricultural crop by the usual means or methods of cultivation.

The BLM master title plat for T. 40 N., R. 70 E., Mount Diablo meridian, reflects that lot 3 of section 30 is within material site Nev 056209. The Materials Act of July 31, 1947, as amended, 30 U.S.C. §§ 601, 602 (1976 and Supp. IV 1980) authorizes the disposal of mineral materials including, but not limited to, petrified wood and common varieties of sand, gravel, pumice, pumicite, cinders, and clay in the public lands. See generally 43 CFR Part 3600. Appellant acknowledges that lot 3 contains gravel but reports that the Nevada State Highway Department is not using the material site. The controlling factor in this appeal is not whether the material site is still being used; rather, it is that the material site was authorized because minerals exist in the land. Gravel is such a mineral. United States v. Schaub, 163 F. Supp. 875 (D. Alaska 1958); Layman v. Ellis, 52 L.D. 714 (1929). Accordingly, lot 3 does not fall within the statutory definition of desert lands and BLM properly rejected appellant's desert land entry application as to lot 3. See Guy Curtis, A-28140 (Jan. 26, 1960).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Nevada State Office is affirmed.

Will A. Irwin
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

James L. Burski
Administrative Judge

